



APPEAL
Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Suncert Building Consultants

Concurrence Agency: Maroochy Shire Council

Site Address: *withheld*–“the subject site”

Applicants: *withheld*

Nature of Appeal

Appeal under Part 2, Section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of Suncert Building Consultants, based on a concurrence agency response from Maroochy Shire Council, to refuse an application for a siting concession relating to an existing concrete block wall acting as both a boundary and swimming pool fence on “the subject site”. The relaxation being required as the wall has been built within 4.5m of a waterway and the structure is 2m high.

Date and Place of Hearing: 8.15am, Monday 25 February 2008 at “the subject site”

Tribunal: Debbie Johnson – Chairperson
Robin King-Cullen – General Referee

Present: Applicants
Brett England – Private Certifier, Suncert Building Consultants
Steven Tucker – Building Surveyor, Maroochy Shire Council
Fred Vicary – Building Surveyor, Maroochy Shire Council

Decision

In accordance with section 4.2.34 of the IPA, the Tribunal **changes** the decision of Suncert Building Consultants dated 11 January 2008, by directing Suncert Building Consultants to approve the application for the existing concrete block wall in its ‘as constructed’ location.

Background

On 27 August 2007, Council undertook an inspection of “the subject site” to establish whether the applicants’ in-ground pool was adequately fenced and compliant with legislated regulations for pool fencing. This initial inspection found that there were some areas around the pool where the fencing required modification. Council therefore issued a notice dated 7 September 2007 to the applicants. In response to this notice the applicants subsequently sought to rectify their fencing which in part involved the removal of an original lattice style timber fence.

The applicants then employed tradesmen who erected a concrete block wall in its place. The newly erected wall which is 2m high has been built along the Western boundary line of the subject site, within 4.5m of an existing waterway. The applicants were unaware initially that they were obliged to obtain a development approval for the erection of this wall. Similarly, as the wall was higher than 1m and in part situated within the 4.5m setback from the waterway, an approval for a siting variation was also required.

Material Considered

- ‘Form 10 – Notice of Appeal’ lodged with the Building and Development Tribunals on 16 January 2008;
- Council’s Concurrence Agency Response dated 13 December 2007;
- Suncert Building Consultant’s Decision Notice dated 11 January 2008;
- Property details, including mapping as available through PD Online, Council’s website;
- The applicant’s grounds for appeal against Council’s reasons for refusal submitted with the application to the Tribunal and the reasons for proceeding with construction as forwarded to the tribunal, dated 16 January 2007;
- Council’s representatives provided verbal submissions to the Tribunal detailing Council’s concerns relating to the application and the reasons for refusal;
- Verbal submissions made at the hearing by the applicants;
- Verbal submissions made at the hearing by the representative from Suncert Building Consultants;
- Written submission delivered at the hearing by Council’s representatives;
- Written submission delivered after the hearing by the representative from Suncert Building Consultants;
- Letters of support provided by adjoining property owners;
- Relevant sections of the Maroochy Plan 2000 including amendments;
- The *Integrated Planning Act 1997*;
- The *Building Act 1975*;
- The *Building Regulation 2006*; and
- Queensland Development Code MP1.2.

Findings of Fact

The Tribunal made the following findings of fact:

- The concrete block wall, subject of the Appeal, has already been erected. The wall is 2m high and extends to the property boundary adjoining the waterway.
- The concrete block wall was erected in response to requirements of Council regarding a non-complying pool fence.
- According to the applicants, the concrete block wall is the same height and in the same location as the previous, non-complying, lattice fence. Photographs supplied appear to support this assertion.
- Maroochy Plan 2000 requires that “A buffer is maintained to protect and enhance the visual amenity of waterways having regard to the amenity of adjoining residential land”. The relevant Acceptable Measure to achieve this states “For waterways where a revetment wall exists, all buildings and structures higher than 1m above ground level are set back 4.5m from the property boundary adjoining the waterway.”
- The site is located at the end of the canal with the result that there is little, if any, adverse impact on the visual amenity of the waterway.
- Although the amenity of adjoining residential properties along the Western boundary could be adversely impacted, the Tribunal noted letters of support from the two adjoining owners who would be most affected.
- “The subject site” has an apparently longstanding rendered wall along the Eastern boundary which is also 2m high and built in part within 4.5m of the waterway. Council’s representatives have not taken exception to this wall although it appears to be in an identical circumstance to the newly erected wall. The established wall is less obvious than the newly erected wall due to existing on site landscaping elements.

Reasons for the Decision

The newly erected wall does not affect the amenity of the waterway in this instance due to the layout of the allotments in relation to the waterway.

“The subject site” has a similar existing boundary wall on the opposite side of the site.

Council’s representatives are not concerned with amenity issues in regards to this wall and it would be unreasonable to expect that amenity issues will arise over the newly erected wall particularly as neighbouring property owners have submitted letters of support.

Debbie Johnson
Building and Development Tribunal Chairperson
Date: 14 March 2008

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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